IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 5423 of 2005

Between:

Munagala Nagavenkata Srinivasa Rao, S/o. Nageswara Rao,
R/o. Official Colony, Tanuku, West Godavari District.

..... PETITIONER

AND

S.H.O., P.s. Tanuku Rural, West Godavari District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to grant a direction, or order, or writ, more particularly in the nature of Writ of Mandamus, to direct the respondent to investigate the matter forthwith as per law, and to hand-over the gold articles, motorcycle bearing No. AP-37 AD-4558 which were recovered, and the amount to the petitioner as per law and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.CHALLA AJAY KUMAR

Counsel for the Respondent No.: GP FOR HOME

The Court at the admission stage made the following:

-

-

-

-

-

-

-

-

ORAL ORDER:.

Heard both sides.

2. The complaint of the petitioner in this writ petition is that though an order of reference was passed by the Magistrate invoking jurisdiction under Section 156(3) Cr.P.C, the respondent has not been investigating the matter and filing report before the Magistrate to initiate further action.

3. Though the grievance of the petitioner appears to be very trivial in nature, in view of the frequent complaints received by this court on similar lines, I feel it expedient to deal with the matter in detail.

4. Section 156 Cr.P.C deals with the power of the Police Officers to investigate cognizable case. It reads thus:

"156. Police Officer's power to investigate cognizable case: (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a Police Officer in any such case shall, at any stage, be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned".

5. Section 190 Cr.P.C, deals with the 'cognizance of offences by Magistrate'. It reads thus:

"**190. Cognizance of offences by Magistrate**:- **(1)** Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence:-

a. Upon receiving a complaint of facts which constitute such offence;

(b) Upon a police report of such facts;

(c) Upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1), of such offences as are within his competence to inquire into or try."

6. This provision enables the Magistrate, subject to the other provisions of Chapter XIV Cr.P.C, to take cognizance of any offence, upon receipt of a complaint of facts which constitute any offence; or upon a police report of such facts; or upon information received from any person other than a police officer or upon his knowledge that such offence has been committed.

7. Section 200 Cr.P.C deals with 'examination of Complainant'. It is useful notice the provisions of Section 200 Cr.P.C, so far as they are relevant for the present purpose, which run thus:

"**200. Examination of Complainant**: A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate.

... ...

... ... ".

8. Under the above provision, the Magistrate, taking cognizance of an offence on a complaint, shall examine the complainant and witnesses, if any on oath.

9. From a keen reading of the above-extracted provisions of Section 156, 190 and 200 the Code of Criminal Procedure, it is clear that as and when a complaint is received by the Magistrate, the Magistrate can refer the matter under Section 156 (3) Cr.P.C to the Police for necessary inquiry/investigation in order to find out the veracity or otherwise of the complaint. But, either under Section 156 or under Section 190, it is nowhere postulated as to what should happen when the police did not complete the investigation inspite of reference made under Section 156(3) Cr.P.C. In other words, the Code of Criminal Procedure is silent

on this aspect.

10. The general impression pervasive among the public is that, when the police, on reference by the Magistrate, find that there is no truth in the complaint made by any person after conducting an inquiry as directed by the Magistrate under Section 156 (3) Cr.P.C. there is no explicit remedy available to the complainant. But, it is to be noted that, still the Magistrate, nevertheless, has got jurisdiction under Section 200 Cr.P.C. to take cognizance of the offence, upon complaint made by the complainant, subject to certain conditions. But, this position is not explicitly made clear by any of the provisions, referred to above.

11. In some cases, the result would be that, even after the reference made by the Magistrate under Section 156 (3) Cr.P.C, the police may take their own time or sometimes may not conduct any inquiry/investigation, and the result would be inordinate delay in the process of investigation. Therefore, it is essential to make it clear that when there is power conferred on a Magistrate under Section 156(3) of the Code to refer a complaint to the police for investigation to find out as to the veracity or otherwise of the complaint and if report is not received within a reasonable period, the Magistrate shall have inherent power to proceed with the complaint, invoking the jurisdiction under Section 200 Cr.P.C, of course, subject to the satisfaction of conditions mentioned in Section 200 Cr.P.C.

12. Precisely, that is the reason why several persons, having felt aggrieved by the alleged inaction on the part of the Police, have been approaching this Court under Article 226 of the Constitution of India and seeking directions to the police to complete the inquiry/investigation, upon reference of a complaint by the Magistrate under Section 156(3) Cr.P.C.

13. It should be understood by every investigating agency that whenever reference is made under Section 156(3) Cr.P.C, it is incumbent upon it inquire/investigate into matter as expeditiously as possible, preferably within reasonable period, and shall report back to the Magistrate the result of such inquiry/investigation. What are the powers of the Magistrate, pursuant to such report need not be reiterated since Section 190 and 200 Cr.P.C, referred to above, are sufficiently clear.

14. For the aforementioned reasons, this writ petition is allowed at the admission stage with a direction to the respondent to complete the inquiry/investigation within a period of four weeks from the date of receipt of a copy of this order and to report the result thereof to the

Magistrate.

_____

D.S.R. VARMA, J

DATED: 17.03.2005

Ka

To

1. S.H.O., P.s. Tanuku Rural, West Godavari District.

2. 2 CCs to G.P. for Home, High Court of A.P., Hyderabad. (OUT)

3. 2 CD Copies.

4. 1 CC to MR.CHALLA AJAY KUMAR